

Remarks

This communication is considered fully responsive to the Office Action mailed January 21, 2005 and made Final. Claims 1-9, 11-19, 21-26, and 28-29 were examined. Claims 1-9, 11-19, 21-26, and 28-29 stand rejected. No claims are amended. Claims 10, 20, and 27 were previously cancelled. No other claims are canceled. No new claims have been added. Reexamination and reconsideration of claims 1-9, 11-19, 21-26, and 28-29 are respectfully requested.

Claim Rejections - 35 U.S.C. 103(a)

The Office Action rejected claims 1-9, 11-19, 21-26, and 28-29 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,408,406 to Parris (hereinafter referred to as "Parris") in view of U.S. Patent Publication No. 2002/0184580A1 to Archibald (hereinafter referred to as "Archibald"). The Applicant respectfully traverses this rejection.

The invention recited in claims 1-9, 11-19, 21-26, and 28-29 of Applicant's patent application was conceived before the earliest priority date of Archibald (i.e., the "reference date"), and is coupled with due diligence from prior to the reference date to the filing date of Applicant's patent application. In support thereof, Applicant submitted a Rule 131 declaration and exhibits cited therein with the Response filed on March 21, 2005.

The Advisory Action mailed April 4, 2005 (hereinafter referred to as the "Advisory Action") states that the declaration was entered but did not overcome

the rejection because the evidence is insufficient to establish a conception of the invention prior to the effective date of Archibald. The Advisory Action also states that the description of the invention in Exhibit A is not the same as the description of the instant application. Applicant respectfully traverses this rejection. A Rule 131 Declaration is not insufficient merely because it does not show the identical disclosure of the reference or the subject matter involved in the activity relied upon. MPEP §715.02.

The Advisory Action also states that the title on Exhibit A is not the same as the Description of the instant application. Applicant notes that it is common for the title of an invention to change between the time the invention is conceived and the time when a patent application is filed. However, Exhibit A was identified by Applicant's docket number (10006728) which is the same as the docket number appearing on the pending patent application.

The Advisory Action also states that the declaration is not signed by the second inventor, Michael Fleishmann. Applicant submits a new Rule 131 declaration and exhibits cited therein. Both inventors have signed the new Rule 131 declaration. In addition, a draft patent application prepared by Applicant's attorney prior to the effective date of the Archibald reference is submitted as supplemental evidence of prior conception of the invention (Exhibit C).

Applicant maintains the position that Archibald is not available as a reference and claims 1-9, 11-19, 21-26, and 28-29 should be allowable. Reconsideration of the new Rule 131 declaration is respectfully requested.

By submitting the attached Rule 131 declaration, Applicant does not make any admission regarding the disclosure of the Archibald reference. Applicant hereby expressly reserves the right to traverse the Examiner's rejection on substantive grounds if necessary at a later date.

Conclusion

The Applicant respectfully requests that a timely Notice of Allowance be issued in this matter.

Respectfully Submitted,

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